DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0255
Gross Income Tax
For the Years 1988, 1989, 1993, 1994, & 1995

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ISSUES

I. Gross Income Tax-Agency

Authority: Ind. Code § 6-2.1-2-2(a)(2)**;** 45 IAC 1-1-54(2); *U-Haul Co. of Indiana, Inc. v. Indiana Department of State Revenue* 784 N.E.2d 1078 (Ind. Tax 2003); *Oklahoma Tax Comm'n v. Jefferson Lines*, 514 U.S. 175, 184-200 (1995); *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

Taxpayer protests the Department's assessment of additional tax with respect to amount received by a principal for rental income from Indiana, on the basis that it was actually collected for clerical and administrative expenses.

STATEMENT OF FACTS

Taxpayer is primarily a service company based in Arizona, providing various clerical and administrative services. Taxpayer has a contractual relationship with three sets of businesses (collectively, "System"). Taxpayer provides clearing house, accounting, computer, management analysis, and other services to the System in accordance with three groups of businesses. One set ("Set 1 businesses") consists of businesses that provide moving equipment to System. Set 1 receives a percentage of rental amounts collected by dealers.

Another set of businesses ("Set 2 businesses") consists of businesses that merchandise and supervise the maintenance and repair of rental equipment. Each business in Set 2 is assigned a region in which the Set 2 businesses are responsible for establishing and servicing dealer arrangements. Set 2 businesses receive a percentage of gross rental income collected within their regions.

A third set of businesses ("Set 3 businesses") consists of businesses that display and rent moving equipment to the public. Under contracts with taxpayer, Set 3 makes weekly deposits of all rental income collected from the public to a bank account held by taxpayer. Set 3 businesses receive a percentage of gross rental amounts received from the public for leasing activities.

Department conducted an audit of taxpayer and each set of businesses. After review, it was determined by audit that the income from Indiana rentals was subject to gross income tax to the taxpayer, based on the fact that taxpayer is the principal and the sets of businesses are agents with

respect to the collection of rental income in Indiana. Taxpayer protests the imposition of gross income tax with respect to the rental receipts attributed to it, maintaining that taxpayer's receipts were for clerical and administrative services performed outside Indiana.

I. **Gross Income Tax**-Agency

DISCUSSION

For income derived by certain taxpayers prior to January 1, 2003, Indiana imposes a tax known as the gross income tax. Ind. Code § 6-2.1-2-2. For a taxpayer who is not an Indiana resident or domiciliary, the tax is imposed on the receipt of taxable gross income derived from activities or businesses or any other sources within Indiana. Ind. Code § 6-2.1-2-2(a)(2).

Taxpayer's income under its contractual relationship with its sets of businesses derives from the rental activity conducted by its agents' rental of property. *U-Haul Co. of Indiana, Inc. v. Indiana Department of State Revenue* 784 N.E.2d 1078, 1084 (Ind. Tax 2003). To the extent that the taxpayer's receipts are the result of Indiana rental of moving equipment, the rentals constitute an activity or business conducted within Indiana. *Id.*

Taxpayer argues that the income was derived from essentially clerical and administrative services, in effect for the benefit of its sets of businesses, and therefore only taxable in the state in which the services were actually rendered, in contrast to the agent in *U-Haul* who argued successfully that its payments were not for their direct benefit. *Id.* at 1079. Taxpayer's arguments regarding the receipts being for clerical and administrative-type expenses under contractual arrangements ignores one minor thing: while taxpayer did engage in such activities, the Tax Court explicitly found that the taxpayer maintained a significant degree of control over the sets of businesses with respect to income derived from renting moving equipment, enough to create an agency relationship with the sets of businesses with taxpayer as principal. *Id.* at 1083-1084. The rental of moving equipment in Indiana by taxpayer and its agents constitutes an activity or business conducted within Indiana.

Further, taxpayer has consistently maintained for several years of Departmental audits, protests and litigation involving the sets of businesses that the Set 2 businesses have been agents for taxpayer for the collection of the rental income derived from activities in Indiana. Taxpayer's activities in this case are the activities conducted by the taxpayer in *U-Haul*. In *U-Haul*, a service company, rental companies and rental dealers had the same relationship as the relationship between taxpayer and the sets of businesses in this case. The Tax Court found an agency relationship between the service company as principal and rental companies as agents which exempted the rental companies in that case from gross income tax on the rental income to the extent it was not retained by the agents. *Id.* at 1084. Thus, as the same relationship existed between taxpayer and its sets of businesses as existed between the service company and rental companies and rental dealers in *U-Haul*, an agency relationship existed between taxpayer and the sets of businesses.

In addition, taxpayer cites to *U-Haul* for the proposition that the principal is not subject to gross income tax when another taxable person is acting as an agent for gross income tax. While an

agency relationship does alter *who* the taxpayer is, and may result in an exempt principal based on that principal not being an otherwise taxable entity, it does not change the *character* of the transaction from which the relevant income derived. Here, the gross income was derived from rental of property within Indiana, and is gross income within the meaning of the statute.

Taxpayer also argues, in the alternative, that less than the full amount of gross income should be taxed to taxpayer. While a portion of the gross income may have been payable to the various sets of businesses acting as agents, taxpayer has derived the beneficial interest in the full amount of gross income. Its payments to its sets of businesses reflect the discharge of contractual obligations under the agency. 45 IAC 1-1-54(2). Taxpayer had the right to the full amount of the gross income at the moment it was deposited into its bank account, and if taxpayer refused to permit conveyance the income to the sets of businesses, the sets of businesses would sue taxpayer for their contractual portions. Thus, taxpayer had a beneficial interest in the full portion of the gross income at the time of receipt, and only later relinquished its share.

Taxpayer also raises a constitutional challenge based on a lack of ties to Indiana. This point will not be belabored. Taxpayer has entered into Indiana via its agents, which is plainly sufficient to create nexus for taxation in Indiana. Taxpayer incurs no additional tax if all states impose a similar tax, while the tax relates fairly to the amount of services that Department provides taxpayers and its agents. Taxpayer's liability for gross income tax is the same for its income derived from Indiana as if taxpayer was located in Indiana. Finally, taxpayer's taxes fairly reflect taxpayer's benefit received from roads, police and fire protection, as well as the myriad of other services that the government of Indiana provides. *Oklahoma Tax Comm'n v. Jefferson Lines*, 514 U.S. 175, 184-200 (1995); *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

FINDING

Taxpayer's protest is denied.

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